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CHARLES ELMO

No. 424

In the Supreme Court of the United States

OCTOBER TERM, 1929

IKE DANOVITZ, SURVIVING PARTNER OF FEITLER BOTTLE COMPANY, CLAIMANTS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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OPINIONS BELOW

No formal opinion was rendered by the District Court. A short statement of that court's reasons for holding that the Government had established a *prima facie case* will be found at pages 53–54 of the record. The opinion of the Circuit Court of Appeals (R. 94) is reported in 34 F. (2d) 30.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered July 19, 1929. (R. 102.) The petition

for certiorari was filed September 26, 1929. Jurisdiction to issue the writ is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The main question presented is whether bottles, corks, labels, capping machines, sealing wire, forged labels, and other articles, seized with whiskey syphons, filters, etc., in a bootleggers' outfitting establishment is forfeitable as "property designed for the manufacture of liquor intended for use in violating this title," within the meaning of Section 25, Title II, of the National Prohibition Act.

Secondary questions involved are whether the search warrant in this case issued upon probable cause, and whether the libel for forfeiture was legally insufficient for failure to allege facts showing that the property sought to be condemned was lawfully in the custody of the United States.

STATUTE INVOLVED

Section 25, Title II, of the National Prohibition Act, c. 85, 41 Stat. 305, 315 (U. S. C., Title 27, Section 39) provides, so far as material here, that—

> It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this title or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue as provided in Title XI of public law

numbered 24 of the Sixty-fifth Congress, approved June 15, 1917, and such liquor, the containers thereof, and such property so seized shall be subject to such disposition as the court may make thereof. If it is found that such liquor or property was so unlawfully held or possessed, or had been so unlawfully used, the liquor, and all property designed for the unlawful manufacture of liquor, shall be destroyed, unless the court shall otherwise order. * * *

STATEMENT

This case was begun by the filing of a libel in the District Court of the United States for the Western District of Pennsylvania praying for forfeiture under Section 25, Title II, of the National Prohibition Act, of a quantity of whiskey, as well as of articles described in the libel as "property and material designed for the manufacture of contraband liquors," consisting of empty cans, empty bottles, cartons for whiskey bottles, whiskey labels, labeling machines, bottle caps, crimping machines, corks, sealing wire, "whiskey barrels all containing whiskey chips and having strong odor of whiskey, and more than half containing small quantity of whiskey," and numerous other articles, all of which were alleged to have been "lawfully seized * * * at a place known as 1026–1028 Watson Street, Pittsburgh, Pennsylvania." (R. 3–8.)

As the Circuit Court of Appeals said (R. 96):

> The truth, established by the search, is that these respondents kept what might be called

a bootleggers' outfitting establishment, that is, an establishment to equip bootleggers with every article they would need in plying their unlawful trade. The prohibition agents, acting under the search warrant, seized about every movable thing in sight.

Automobiles, an adding machine, check protector, typewriter, and parcel-post scale were subsequently returned to the claimants. (R. 12–13.)

Prior to trial, counsel for the claimants moved to dismiss the libel on the ground that it was insufficient to support an order of forfeiture because it failed to allege or show that the seized property was in the lawful possession or custody of the United States. (R. 16–17.) The motion was denied (R. 17) and, following a trial, the court held that under the libel, answer and proof the Government was entitled to a decree of forfeiture (R. 73–74). Upon appeal, the decree was affirmed by the Circuit Court of Appeals. (R. 101–102.)

ARGUMENT

The question which the petitioner raises as to the construction of Section 25, Title II of the National Prohibition Act (copied on pages 2-3, *supra*) is one which is important and not free from doubt. The enforcement of prohibition will be seriously handicapped if the seizure and forfeiture of bottles and other articles used in bottling liquor are not permitted by law. We consequently do not oppose a review of this question.

The question is a variant of that raised in the Government's petition for a writ of certiorari in *United States of America* v. *Kohler Company*, No. 420, October Term, 1929. That case involves the construction of the identical section in the statute which is applicable to the present case, but the decision in that case would probably not cover the situation involved in the instant case. The instant case is the case referred to on page 14 of our brief in support of the petition in the *Kohler case*.

We submit that the decisions of the courts below as to the other questions raised in the instant petition were clearly right and that they are not of sufficient importance to warrant a review by this Court.

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